

LAL (Migration) [2018] AATA 5405 (29 October 2018)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr HARKESH LAL LAL
CASE NUMBER:	1709257
DIBP REFERENCE(S):	BCC2014/957379
MEMBER:	Fiona Meagher
DATE:	29 October 2018
PLACE OF DECISION:	Brisbane
DECISION:	The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Statement made on 29 October 2018 at 7:05pm

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – genuine spousal relationship – inconsistencies in evidence – identity of the marriage celebrant – location of the marriage – parental knowledge and acceptance of relationship – relationship with sponsor's son – messaging correspondence between the parties – author of applicant's written statement – registration of marriage – evidence of companionship or emotional support – anonymous allegations – marriage and children in India – decision under review affirmed

1.

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65

Migration Regulations 1994 (Cth), Schedule 2, cls 820.211, 820.221

CASES

He v MIBP [2017] FCAFC 206

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

2. This is an application for review of a decision of a delegate of the Minister for Immigration on 18 April 2017 to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
3. The applicant applied for the visa on 9 April 2014 on the basis of his relationship with his sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
4. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.820.211 because the delegate did not consider the applicant met any of the requirements of subclasses (2), (5), (6), (7), (8) or (9).
5. The applicant appeared before the Tribunal on 15 August 2017 to give evidence and present arguments. The Tribunal also received oral evidence from Ms Deborah Van Ash (the sponsor) and Rev Adrian Van Ash. The Tribunal hearing was conducted with the assistance of an interpreter in the Punjabi and English languages.
6. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.
7. In addition to the material which was before the Department, the Tribunal had before it additional material including statements from a bank account in the name of Mrs D A Van Ash, covering a period April to June 2017, bank statements in the name of Mrs DA Van Ash and Mr H Lau covering a period 26 June 2017 to 2 August 2017, a bundle of photographs including the applicant and sponsor alone together and with others, invoice for white goods from Harvey Norman in the name of the applicant, a gym membership in the name of the applicant citing his address as in South Grafton, Telstra invoice for the period 17 June to 16 July in the names of the applicant and sponsor, further copy of the certificate of marriage of the applicant and sponsor and related correspondence, correspondence from South Grafton Public School in relation to the applicant's involvement with the sponsor's son, affidavit and related documents regarding the applicant's marital status in India, statutory declarations from Ms Price, Mr Marion, Ms Deborah Van Ash, a letter from the sponsor's parents, a statement in relation to house purchase between the sponsor and her parents, a deed of sale dated 30 June 2013 relating to a motor vehicle, entered into between the sponsor and her parents, statutory declaration of Rev Adrian Van Ash, a letter from the applicant dated 21 July 2017, a bundle of video chat records and a letter in the name of Rev and Mrs Van Ash, and Maj Erica Van Ash. After the hearing a bundle of driver log records were also received.

CONSIDERATION OF CLAIMS AND EVIDENCE

8. The issue in the present case is whether the applicant is the spouse of the sponsor.
9. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen.

10. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in r.1.09A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

11. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship. On the evidence, a marriage certificate dated 7 March 2014, registered on 21 March 2017, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

12. Section 376 certificates

13. The Tribunal has been provided with two certificates issued by the Department of immigration and border protection dated 9 May 2017 and 21 September 2017. The information referred to in the certificate dated 9 May 2017 related to information from three sources, all of whom wished to remain anonymous. The Tribunal has considered the material referred to, and considers that it was given in confidence, and therefore considers that the certificate is valid. The Tribunal also considers that the information contained therein is relevant to the review of the applicant's case. Accordingly, the Tribunal forwarded a copy of the certificate dated 9 May 2017 to the applicant electronically (as he was attending the hearing by video link from Grafton). Further, the Tribunal read the certificate to the applicant, using the services of the interpreter to provide a verbatim interpretation. The Tribunal invited the applicant to make submissions as to the validity of the certificate, and as to whether the material should be released. The applicant made no such submissions. The gist of the material covered by the certificate was put to the applicant pursuant to the provisions of section 359AA, as will be set out below.
14. In relation to the certificate dated 21 September 2017, having reviewed it, the Tribunal concludes that the certificate is actually purportedly issued as a notice pursuant to section 376(1)(b), that is, that the document(s)/information referred to have been provided in confidence to the department and that section 375A does not apply. Having considered the document(s)/information referred to, the Tribunal is not satisfied that they were given to the department in confidence, (nor did they attract any public interest immunity), and accordingly the Tribunal does not consider the certificate valid. In any case, the matters purportedly covered by the certificate were before the Tribunal in another form, and discussed with the applicant in that context. Further, the applicant was already aware of the document(s)/information.

Are the other requirements for a spouse relationship met?

15. Inception and development of the relationship

16. At hearing the applicant gave evidence that he met the sponsor in 2012 at the birthday party of his sister's husband. At the time he was still married to his first wife, so they just talked now and then. The applicant said that the relationship started in 2013, and that he and the sponsor first discussed marriage after he was divorced. When asked by the Tribunal whether

he discussed the prospective marriage with the sponsor with anyone, he said that he talked to his friends and his sister, and they asked him whether he and the sponsor liked each other. The applicant was unable to remember when he had those conversations with his friends and sister, other than he said that it was after his divorce in 2013. The applicant said that he had told the sponsor he liked her, and met her parents in 2013.

17. The applicant told the Tribunal that he asked his wife to marry him, but did not consult her parents. When pressed about the nature of the proposal, he said he asked her whether she liked him, and whether she wanted to get married. When asked by the Tribunal whether it was a special occasion, the applicant responded that it was after the divorce in 2013. When asked that question again, the applicant responded that it was not a special day – he was just sitting around with his sister, her husband, and the sponsor. The Tribunal asked the applicant about the nature of the proposal. The applicant did not answer the question. The Tribunal asked whether he proposed to the sponsor in front of other people. He did not answer the question.
18. The Tribunal asked the applicant whether he discussed his marriage with anyone else, including his family in India. Initially he said he did not, but subsequently he contradicted that by saying that he did speak to them before he got married, telling them that he would like to marry the sponsor. The applicant said that his parent's attitude was that he should do whatever makes him happy. In that regard, the Tribunal asked the applicant about the affidavit claimed to be provided by his father, in relation to his marital status. The Tribunal specifically put to the applicant the following extract from that affidavit:

19. After some time my son informed me he has new relationship with the non-Punjabi woman who come from Sri Lanka. At first I was very concerned by this. We not wholeheartedly excited to hear this news. However he did not listen to our concern and married her in civil marriage in 2014.

20. Initially the applicant stated that his father had not written that, and that his father was very happy (about the relationship). When pressed, the applicant said that the displeasure expressed in the above paragraph of the affidavit referred specifically to the Australian Department of Immigration. The Tribunal does not accept that explanation and considers that the extract from the affidavit clearly states that the applicant's father was at least initially concerned about his son's marriage to the sponsor.

21. When asked about the wedding, the applicant said that it occurred on 7 March 2014. He said that the parties were married at court, took some photographs in the park, and went to an Indian restaurant with some friends where day cut the cake. The applicant said that there were about 18 to 20 people at the wedding, including his sister and husband and some friends. The applicant said that the sponsor's parents did not attend the wedding because the sponsor was reluctant to tell them about the marriage, as she was scared that they would disapprove. The Tribunal then put to the applicant, pursuant to the provisions of section 359AA of the Act an extract from the delegate's decision which referred to a previous decision of this Tribunal (in relation to schedule three). Specifically the delegate's decision states as follows:

22. I note in the Tribunal member's decision record dated 2 June 2015, it is stated that you provided a letter from "Teja Singh Grewal" a Sikh Minister and authorised marriage celebrant who married you and your sponsor. However, your marriage certificate states your celebrant was "Kirsty Mae Netzler".

23. The applicant provided a variety of responses. Initially he said that there had been no marriage at the Sikh temple. He said that they had attended the courthouse. He then said that they did not attend the courthouse. He said that the Sikh Minister knew about his Visa

conditions. Finally, the applicant said that the parties attended the Sikh temple for a blessing afterwards. The Tribunal has concerns about the explanation provided by the applicant in relation to his recollection of his marriage. The Tribunal considers that the applicant's equivocation regarding the identity of the marriage celebrant and the location of the marriage might throw doubt upon the nature of the relationship, in particular as to whether the parties have a mutual commitment to a shared life to the exclusion of all others, and are in a genuine and continuing relationship. The Tribunal considers that in a genuine relationship based on mutual commitment the applicant would have a clear and unequivocal recollection of the identity of the marriage celebrant and the location of the marriage.

24. The Tribunal asked the applicant about gifts at the wedding. The applicant said that he gave the sponsor a computer and some flowers. He said that the guests gave them perfume, shaving items and \$50 in a card. The Tribunal also asked the applicant about whether the parties had a honeymoon. The applicant was again evasive in relation to this question, and finally replied that he went to Canberra for the sponsor's grandmother's birthday in 2016, and that "everyone knew he was her husband on that trip". The applicant said that that was not really a honeymoon. He said that the parties were unable to have a honeymoon immediately after their marriage because he was working. He said that he moved into the sponsor's house on the day of their marriage. The applicant said that prior to that he had been living in Woolgoolga.
25. The Tribunal asked the applicant when the sponsor's parents were told of the marriage. Initially the applicant said that they were told in January 2014. Subsequently however and inconsistently, the applicant said that he and the sponsor told her parents two months after the wedding. He said again that the sponsor was too scared to tell them earlier.
26. The Tribunal asked the applicant how much contact he and the sponsor had with the sponsor's parents, after they became aware of the marriage. He said that they visited sometimes but not often because they spend most of the time in the United States where their son lives. The applicant said that the people who live in the house are himself, the sponsor and their son XXX.
27. The applicant told the Tribunal that he is a truck driver. He said that he drives for a company called Water Solutions, and that he drives between Grafton Brisbane and Melbourne. He said that he typically has a 12 hour break in Gundagai, and that he also does some local work. The Tribunal questioned the applicant further about his work patterns, and the days and nights when he is in Grafton, as opposed to when he is away. The applicant responded inconsistently to these questions. Initially he said he was in Grafton from Friday night until Monday morning. Subsequently he said he gets to Grafton on Saturday evening between 6 and 7 PM. The applicant said that he typically drove from Grafton to Brisbane and back on Monday. The Tribunal has also considered the drivers logs that were provided after the hearing. The Tribunal notes that those logs are consistent with the applicant driving between Grafton Brisbane and Melbourne (and additional places as well). The Tribunal accepts that they are evidence of the applicant's work activities.
28. The Tribunal asked the applicant how he and the sponsor spent their time together. The applicant said that when he returned late on a Saturday night he generally picked up takeaway from the Indian and spent time watching television and with XXX. He said that on Sunday they visit his sister and their friends. He said that sometimes they visit the sponsor's parents. The applicant also said that the sponsor visits her parents at their house on a Monday. He said that on Monday night when he returns from Brisbane he cooks Indian or the parties go to KFC, McDonald's or Hungry Jacks for their son.
29. When asked further questions about the nature of the relationship the applicant responded that he loved the sponsor and that he had not entered into a "contract marriage". The

applicant said that his wife was very distressed about his visa situation, but that he cannot keep calling the department and asking where it is at. He said that she is even more distressed because she has a broken leg. The applicant went on to say that he had spent up to \$30,000 on lawyers fees to obtain a visa, and had provided lots of letters. When asked by the Tribunal whether the applicant had receipts for the lawyers fees, he responded that he did not. He said that he had put money into the accounts of two lawyers, one in Woolgoolga and one in Grafton, and that they had taken the cash and not given receipts. The Tribunal put to the applicant that it was concerned that he had not received receipts, particularly given the sums of money involved. The applicant's response was that "I'm Indian and we trust people". When asked by the Tribunal why his lawyer was not at the hearing, the applicant said that he did not regard a lawyer as necessary at the hearing as he would be the one to whom the Tribunal would speak, rather than the lawyer. The Tribunal finds it implausible that the applicant would not have been provided with receipts for payments to lawyers.

30. The sponsor gave evidence that was broadly consistent with that of the applicant except in respects which will be set out below. However her evidence was generally given in a hesitant fashion and was often unclear and lacking in detail. To the extent that the evidence was inconsistent, the sponsor said that the applicant proposed to her at their house where he went down on his knees. (However she said that in a hesitant and uncertain manner.) The applicant also said that the parties were given wine and flowers by their wedding guests, and added that her husband gave her a ring as well as the computer at the time of their marriage.

31. *Financial aspects of the relationship*

32. The Tribunal has considered the financial documents before the Department. The Tribunal considers that the separate bank accounts do not provide evidence of any pooling of financial resources. The Tribunal notes that there are bank statements in joint names, but that they only commence in 2016, some two years after the parties marriage. Further, those bank statements provide little evidence of the pooling of financial resources. The Tribunal considers that the NRMA certificate of insurance, and concomitant debits from the joint bank account supports that the sponsor's insurance is debited from the joint account. The Tribunal however notes that there is no evidence that the application for a marriage certificate was paid out of the joint account. The Tribunal also notes that the sponsor's Centrelink records indicate that she has reported the applicant's income for certain periods.
33. The Tribunal has also considered the financial documents provided to the Tribunal. The Tribunal is able to derive little by way of evidence of the pooling of financial resources or the sharing of day to day household expenses from the sponsor's account. The Tribunal notes, with respect to the joint account in the name of the applicant and sponsor, there is evidence of numerous Internet transfers and payments into that account, and interbank transfers, but no evidence as to the source of those other than that the interbank transfers from the Commonwealth Bank. It is also obvious that the sponsor's pension and family allowance are paid into that account, and there are numerous eftpos transactions from that account. It is not clear however how this supports the pooling of financial resources or the sharing of day to day household expenses.
34. The Tribunal notes that the parties do not jointly own any assets, nor have any joint liabilities, nor owe legal obligations to one another.
35. At hearing, the applicant stated that since the sponsor broke her leg he has taken time off work to look after her. He said that therefore the parties are living on money from Centrelink which is paid to his wife. The applicant said that his pay goes into the joint bank account, and that the bills come out of it. The Tribunal asked the applicant who pays the bills, that is, how do the bills get paid. The applicant's response was that "they come out of the joint

account". The applicant said that he had borrowed money from friends as the Centrelink benefits were not sufficient.

36. With respect to the financial aspects of the relationship, the sponsor said that the applicant's pay goes into the joint account, and the bills come out of it. She said that she was entitled to a carer's pension and her sons allowance. When asked by the Tribunal whether the applicant had borrowed money from anyone else during this period whilst he was caring for her and unable to work, the sponsor replied that he had not. The Tribunal notes the inconsistency between the applicant and sponsor in relation to this matter. When asked whether the applicant had spent money on lawyers for the purposes of obtaining the visa, and if so, how much, the sponsor responded that the applicant had spent about \$5000 with lawyers for the purpose. The Tribunal also notes the inconsistency between the applicant and sponsor regarding this matter.
37. Overall the Tribunal places little weight on the financial aspects of the relationship. The Tribunal finds that there is a paucity of evidence supporting the financial aspects of the relationship, and accordingly places little weight upon it.

38. *Nature of the household*

39. The Tribunal notes that the sponsor has a son, XXX, and that there is evidence from third parties, including the sponsor's parents that the applicant has a warm and supportive relationship with XXX. Further, there is a letter from XXX's school recognising the role of the applicant in relation to XXX, and his particular contribution since the sponsor broke her leg. In relation to XXX, the applicant said that he is seven years old, attends South Grafton Public School in grade 2 and enjoys playing games on the phone and the tablet, and sometimes plays with him.
40. As to the sharing of the housework, the applicant stated that the sponsor is responsible for washing the clothes and cleaning, and that he cooks Indian food. The sponsor's evidence was consistent with that, and stated that the parties jointly took XXX to the park. As to the parties living arrangements, the Tribunal notes as set out above that there was some inconsistency in the applicant's version of when he is present in Grafton, and when he is on the road.
41. Overall, the Tribunal places some weight upon the evidence regarding the nature of the household, as the applicant clearly knows XXX, and has had ongoing contact with him, witnessed by his school and friends and acquaintances of the parties, and the family of the sponsor.

42. *Social aspects of the relationship*

43. There are a number of statutory declarations supporting that the applicant and sponsor are married. There is detailed evidence from members of the sponsor's family confirming that they, at least at times have recognised the parties as being married to each other, and have seen the relationship as being consistent with a married relationship. Furthermore there is evidence, both written and oral that the applicant attended the sponsor's father's birthday, and her grandmother's birthday. However, the evidence of the sponsor's family is problematic for a number of reasons, which will be dealt with below.
44. In terms of social activities, the applicant told the Tribunal that the parties do not go out much at the moment because of her ankle. He said, that when they do go out, it is to the shopping centre to drink coffee or to his sister's house. The applicant said that his sister's house as a farmhouse. He also said that the sponsor's friends come to their house. He said that sometimes when he is home he and the sponsor attend children's birthday parties together.

The Tribunal asked the applicant whether the parties ever go out alone together. The applicant responded they did not.

45. In terms of contact with his family, the applicant said that the sponsor engages in very limited conversation with his father and other family in India, due to a language barrier. The Tribunal notes that the parties claim to have socialised with the applicant's sister, and a cousin of the applicant and notes that there is also evidence that a distant cousin of the applicant's met the sponsor and her family around the time of the sponsor's father's birthday in July 2018.
46. The sponsor's evidence in relation to the social activities the parties undertake is that they go to the movies together and they take XXX to the park. In terms of going out alone together, the sponsor said that it was difficult because of their child.
47. In relation to the issue of whether the parties spent time alone together, the Tribunal has had regard to the statutory declaration of Deanna Wells dated 7 June 2016, which states as follows:

48. *...my son X is really good friends with XXX, Deborah's son, as they have been friends since Deborah moved to Grafton. We watch each other's children whenever we want to have a date night and have dinner and outings together at least a couple of times a week and my son loves to have sleepovers or play dates at Deborah and Harkesh's house and vice versa.*

49. The Tribunal places some weight upon the evidence of the social aspects of the relationship. The Tribunal considers that the parties have socialised together with others from time to time and notes that there are statutory declarations on both the department and the Tribunal file which conclude that the parties represent themselves to others as being married, and consider that the relationship is genuine. However, the Tribunal has misgivings about the evidence regarding the social aspects of the relationship (and more generally) from the sponsor's family. Further the Tribunal notes inconsistencies regarding the evidence about the nature of the social activities the parties undertake jointly, and between their evidence that they do not socialise alone as a couple and that given by Deanna Wells in her statutory declaration.

50. *Nature of the persons' commitment to each other*

51. The Tribunal considered the bundle of messaging correspondence that was put before it purporting to be between the applicant sponsor. The Tribunal observes that the correspondence does not demonstrate that the parties derive emotional support from one another – the correspondence is extremely superficial and appears contrived. It is confined to questions of one another as to how they are going and what they did during the day.
52. The Tribunal asked the applicant about the plans he and the sponsor have for the future. He said that the parties wish to obtain a loan to buy the house that they live in at the moment. He further said that his wife wanted to go to the United States to see her brother, and that she also wants to go to India. As well, the applicant said that the parties would like to have a baby but that nothing is happening at the moment which is causing a lot of stress to the sponsor. The sponsor gave similar evidence with respect to the parties future plans.
53. The Tribunal notes that the parties have been in contact with one another since 2012, claim to have become romantically involved in 2013 after the applicant's divorce, married in March 2014 and claim to have lived together ever since. The Tribunal also considered the degree of companionship and emotional support that the parties draw from each other and notes that there are statutory declarations before it stating that the applicant has supported the sponsor

since breaking her leg in that he has not worked, rather he has undertaken household duties and cared for XXX.

54. The Tribunal asked the applicant about his statement of 21 July 2017. He initially appeared to be unaware of the document to which the Tribunal was referring. In response to the Tribunal's question as to whether he had prepared the statement to himself, initially he did not respond. Then he told the Tribunal that his father-in-law wrote the statement for him and that he had the help of a friend in that regard. Ultimately the applicant stated that he had advised a friend of his in the Punjabi language as to what should go in the statement, and his friend translated into English, for his father-in-law to transcribe. He said that it explained that he had just not changed his Facebook status. Given the inconsistencies regarding the applicant's evidence as to how the statement was prepared, the Tribunal has concerns regarding the extent to which this statement accurately reflects the applicant's circumstances. These concerns are amplified by the fact that the applicant seemed to be under the impression that the statement related only to his Facebook status.
55. The Tribunal put further matters to the applicant pursuant to the provisions of section 359AA of the Act. Given the material was subject to a valid certificate made under section 376 of the Act the Tribunal put the gist of the matters to the applicant. The Tribunal explained that from time to time the department received information which may be relevant to a matter before it or the Tribunal. The Tribunal said that the information was from a person who claimed to have been offered \$30,000 by a go-between to marry the applicant in order to enable him to obtain a Visa. The information further continued that the person initially had considered entering into the arrangement, but that had withdrawn when she saw a gun in the applicant's car. The applicant responded that he had never had a gun.
56. The Tribunal put further material to the applicant pursuant to the provisions of section 359AA of the Act. Similar to the material referred to in the previous paragraph, this material is subject to a valid section 376 certificate, and accordingly the gist of the information was put to the applicant. The information was that the applicant had entered into a fake relationship for the purpose of obtaining permanent residency in Australia, that his real address is in Woolgoolga, rather than in Grafton, and that he has a wife and children already in India. In response to this information the applicant denied that he had a wife and children in India. He said that he is living with Debbie and that they have a joint account. The applicant went on to explain that he had been to Melbourne (not responsive to the information put to him), and stated that he had been married in 2008 in India, that in 2010 he and his wife had come to Australia, and that his wife had left him in Australia because she had a boyfriend, and accordingly she had divorced him, rather than him divorcing her.
57. The Tribunal put further material to the applicant pursuant to the provisions of section 359AA of the Act. The Tribunal referred the applicant to the decision record of the department, and in particular to the paragraph which stated:

58. On 27 January 2017 you were requested to provide your registered marriage certificate to substantiate your claim that you and your sponsor were married on 7 March 2014. You have provided a registered marriage certificate, however it appears that this marriage certificate has been registered by the Registry of births deaths and marriages on 21 March 2017, over three years after you participated in a marriage ceremony. This leads me to have doubts about why this marriage had not been registered and leads me to have doubts about whether this marriage would have ever been legally registered had the department not requested this information.

59. The applicant's initial response was that Immigration did not ask him for the certificate. He then said that he had never received a marriage certificate by post, notwithstanding he had been told by the courthouse that he would. He therefore said that he

had never been asked about a marriage certificate, and said that there was a letter from the courthouse explaining that the certificate had not been sent.

60. The Tribunal put yet further material to the applicant pursuant to the provisions of section 359AA of the Act. Similar to the material referred to in paragraph 43 and 44 above, this material is subject to a valid section 376 certificate, and accordingly the gist of the information was put to the applicant. The information was that the applicant's marriage to the sponsor is a marriage of convenience, that in fact he lives in Melbourne and only visits for the purposes of the Visa application. The information further was that the applicant had numerous other relationships, and had nearly been hit by the husband of another woman he had been seeing at the same time as his claimed marriage to the sponsor. The applicant's response was that the Tribunal could ask any of his friends, or the sponsor's mother and father – they would all say that he was married to Debbie. He referred the Tribunal to his work diary. The applicant denied all of the information put to him within this paragraph, and said that he has been married to Debbie for four years and never been angry with anyone.
61. Lastly, the Tribunal put further information to the applicant pursuant to section 359AA of the Act. The Tribunal referred the applicant to a letter dated 3 August 2017 it had received by email dated 4 August 2017 in the names of the sponsor's parents and sister, which set out as follows:

62. My wife, Anne, daughter Erica, and Army major and I wrote supporting letters and I signed a statutory declaration in support of this appeal in good faith. These were made on the evidence and information available to us which we now know is not the case. We have today been made aware from similar sources the Department of Immigration and Border Security received that leave us in no doubt about the veracity of the fact that Harkesh has indeed a wife and two children in India.

63. As a result we are duty-bound to write to you to withdraw and revoke all our statements and the statutory declaration in support of Harkesk Lal Lal.

64. The Tribunal notes that this information is also subject to a certificate pursuant to section 376 of the Act. However, as canvassed in paragraph 12 above, the Tribunal does not consider this certificate to be valid.
65. The applicant's response to this information was that his parents-in-law had showed him the letter and said that they wanted proof regarding his marriage in India. The applicant said that in response he showed them a letter from the Indian courthouse. The applicant further said that his parents-in-law are at the hearing today to support him. He said that he invited them to the hearing. The applicant concluded by saying please believe me I love Debbie and XXX.
66. The Tribunal then heard evidence from Rev Adrian Van Ash. Rev Van Ash told the Tribunal that he was a retired public servant and had been a librarian with the National library and the Australian Defence Force. He explained that he and his wife had adopted three children from Sri Lanka and therefore had some familiarity with the processes involved in the Department of Immigration.
67. Rev Van Ash told the Tribunal that he and his wife were disappointed not to be told of the marriage but accepted that that was perhaps due to the fact that the applicant and sponsor lived in Grafton, and he and his wife lived in Coffs Harbour. Rev Van Ash told the Tribunal that he had seen the letter from India and that he now thinks that the applicant has only had one marriage, as the letter from India looks authentic. Rev Van Ash however said that he felt that it was best for the Tribunal to determine. Rev Van Ash gave evidence that his observation of the marriage was that it was a caring and loving relationship. He said that he thought that both the applicant and sponsor were naive and inexperienced in dealing with

bureaucracy. He further said that he would withdraw his email of 3 August 2017 (the letter referred to in paragraph 45 above) subject to the authenticity of the letter from India.

68. The Tribunal asked Rev Van Ash how he had reached the conclusions set out in his email sent 4 August 2017. Rev Van Ash explains that on 3 August 2017 he and his wife had received a telephone call from a woman they had met through the applicant. Rev Van Ash said that this woman claimed to be the applicant's cousin, and that she had attended his 70th birthday party. Rev Van Ash said that woman had telephoned from Canada where she was picking up her mother to take her to India for a knee operation.
69. The Tribunal asked Rev Van Ash whether he and his wife had questioned the applicant about the telephone call. Rev Van Ash said that they did not because they thought the information that they had received in the telephone call was consistent with what was before the Department. Rev Van Ash said that he had no reason to doubt the woman who had telephoned him, as he had been introduced to her as being one of the applicant's cousins. Rev Van Ash said that she had attended his birthday party, and that he and his wife had assisted her in getting her drivers license.
70. The Tribunal asked the applicant whether he knew of the woman who had telephoned Rev and Mrs Van Ash from Canada. The applicant responded the woman who is now in Canada had obtained her drivers license in Australia. The applicant said that whilst assisting her by giving her informal driving lessons he told her about the allegations which had been made regarding him having children. The applicant said that this woman then demanded money from him, and threatened to tell the sponsor and the Van Ashes that he had children if he did not give it to her. The applicant said that he told the woman in Canada that he was unable to give her any money as his wife is sick.
71. In this regard, Rev Van Ash said that he was now disinclined to believe the allegations made by the woman from Canada, given the affidavits provided by the applicant, claimed to be from the applicant's father Ram Parkash and from Santokh Singh. Rev Van Ash placed significant weight on the last paragraph of the affidavit claim to be from the applicant's father which stated as follows:

72. I therefore request you to understand my son was married in India previously, this marriage has now ended. He has now remarried and we are in support of his current marriage. My son tells me that he has much support from father-in-law, mother-in-law and extended family with which we are very happy for. I request you to end this matter now by allowing my sons Visa approved.

73. For completeness the Tribunal also sets out the last paragraph of the affidavit from Santokh Singh, which states as follows:

74. That Sh. Harkesh Lal had not married to anyone else other than Kirandeep Kaur.

75. The Tribunal asked the applicant why someone would go to the lengths of tracking down the telephone number of Rev and Mrs Van Ash and telling them such damaging things, that could be so harmful to him. The applicant responded that he had helped this woman to get her license by driving her around. The applicant then said that she was a long-distance cousin of his, and that he had told her that it was easier to get her license in Australia. The Tribunal did not consider the applicant responsive to its question.
76. Rev Van Ash concluded his evidence by acknowledging that the sponsor is vulnerable. He went on to say that he had observed nothing of concern with relation to the applicant, and said that the applicant is a gentle person who relates well to XXX. Rev Van Ash said that the

applicant communicates with the sponsor and XXX in English, and that he has done classes in English at TAFE.

77. In addition to the matters set out above, the sponsor also told the Tribunal that she does not think that all of the rumours going around about the applicant are true. She said that she does not regard them as very nice. She said that she believes that the applicant got divorced, and that he has married her and that they are trying to be a family. The sponsor concluded her evidence by saying that she wants her husband to be home with the family as he is a great father and husband, and that with a broken leg she would not be able to cope if her husband were not able to stay in Australia. She reiterated that she was very stressed about the status of her husband's Visa.
78. The Tribunal has concerns regarding the nature of the persons commitment to each other. The Tribunal accepts that the parties are known to each other, and that the applicant is known to the sponsor's family. The Tribunal also accepts that the applicant has spent some time with the sponsor's son. The Tribunal also accepts that the parties have been formally married since March 2014. The Tribunal is unable to be certain as to whether or not the parties have lived together, or not separately and apart, within the context and meaning of the Act. The Tribunal is not satisfied that the parties derive companionship and emotional support from one another. Similarly the Tribunal was not convinced that the parties see the relationship as long term. Accordingly the Tribunal places limited weight upon the nature of the persons commitment to each other.
79. The Tribunal has considered all of the circumstances of the relationship before it. The Tribunal considers that the relationship about which it heard are consistent with a contrived relationship. The Tribunal considers that there is insufficient evidence that the parties provide one another with companionship or emotional support. After considering all of the evidence before it, the Tribunal is not persuaded that the review and visa applicants have a long-term commitment to the relationship.
80. The Tribunal finds that the parties know each other personally, are married, have socialised together and have had some communication. However the Tribunal is not satisfied that the applicant and sponsor were at the time of application, or are currently in a genuine spousal relationship. The Tribunal considers the relationship to be contrived for migration purposes and that much if not all of the documentary evidence has been fabricated or produced to support a migration outcome. The Tribunal is of the view that evidence of relationships can be obtained even if the relationship is not genuine. The Tribunal does not consider the documentary evidence to be convincing given the other concerns of the Tribunal. The Tribunal is not satisfied on the evidence that the applicant and sponsor are committed to a shared life as husband and wife to the exclusion of all others.
81. As to the oral evidence, the Tribunal had serious misgivings. As is canvassed within these reasons, the applicant contradicted himself a number of times. He was unresponsive to a number of the Tribunal's questions. He and the sponsor gave evidence which was at times contradictory. By way of example and of particular note was the evidence regarding the proposal, and the money provided to the lawyers for the obtaining of the Visa. The Tribunal does not consider that such important matters in relation to the course of the relationship or the obtaining of the Visa, are such that the parties would not have a clear and consistent recollection in relation to them. In addition, aspects of the parties oral evidence was inconsistent with the written evidence. In particular the Tribunal refers to the statutory declaration provided by Deanna Wells stating that she and the applicant and sponsor support one another by taking each other's children to enable the applicant and sponsor to have "date nights". This was in direct contradiction to the oral evidence of the parties that with a child it is very difficult for them to get out for dates.

82. Further, the Tribunal notes that the applicant did not respond directly to the matters put to him under section 359AA, other than with respect to the email in the names of Rev and Mrs Van Ash, and Major Van Ash dated 3 August 2017, sent 4 August 2017. Ordinarily the Tribunal would place no weight upon anonymous allegations, but in circumstances where on three different occasions similar allegations are provided by different people albeit all anonymously, over a lengthy period of time the Tribunal is inclined to place some weight upon those allegations and more importantly the applicant's unconvincing responses in relation thereto. The Tribunal finds it implausible that parties in a genuine relationship would not bother to register their marriage for more than three years after it took place. The Tribunal does not accept the applicant's interpretation of the first paragraph of his father's affidavit, as indicating displeasure at the Department's processes with respect to handling his Visa application, rather it considers the paragraph clearly sets out the applicant's father's early misgivings with respect to the sponsor and the relationship between her and the applicant.
83. In all the circumstances, the Tribunal is not satisfied that the parties have a mutual commitment to a shared life to the exclusion of all others, are in a genuine and continuing relationship, and live together or not separately and apart on a permanent basis.
84. On the basis of the above the Tribunal is not satisfied that the requirements of s.5F(2) are met at the time the visa application was made and at the time of this decision.
85. Therefore the applicant does not meet cl.820.211(2)(a) and cl.820.221.
86. There is no evidence before the Tribunal that any of the alternative criteria in cl.820.211 are met.
87. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.

DECISION

88. The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Fiona Meagher
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).